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SENATE BILL 994

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TAXATION; ENCOURAGING THE DEVELOPMENT OF ELECTRICAL GENERATION BY ADVANCED COAL ELECTRIC GENERATING OR GASIFICATION FACILITIES OR SOLAR THERMAL ELECTRIC GENERATING FACILITIES; ENACTING A TAX CREDIT AGAINST THE GROSS RECEIPTS TAX, COMPENSATING TAX AND WITHHOLDING TAX LIABILITY OF A QUALIFIED TAXPAYER; PROVIDING FOR COST RECOVERY FOR CLEAN ENERGY UTILITY PROJECTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] ADVANCED ENERGY TAX CREDIT-- GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--

A. A taxpayer that holds an interest in a qualified generating facility may claim a credit to be computed pursuant to the provisions of this section. The credit provided by this section may be referred to as the "advanced energy tax credit".

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B. As used in this section:

(1) "department" means the taxation and revenue department;

(2) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(3) "qualified generating facility" means a new solar thermal electric generating facility that begins construction no later than December 31, 2015 or a new or re-powered coal-based electric generating unit and an associated coal gasification facility that begins construction no later than December 31, 2015 that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is

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1        achievable with the best available control technology; or 2)  
2        ninety percent of the mercury emitted from the input fuel;

3                        (c) captures and sequesters or controls  
4        carbon dioxide emissions so that by the later of January 1,  
5        2017 or eighteen months after the commercial operation date of  
6        the qualified generating facility, no more than one thousand  
7        one hundred pounds per megawatt-hour of carbon dioxide is  
8        emitted into the atmosphere;

9                        (d) all infrastructure required for  
10       sequestration is in place by the later of January 1, 2017, or  
11       eighteen months after the commercial operation date of the  
12       qualified generating facility;

13                       (e) includes methods and procedures to  
14       monitor the fate of the carbon dioxide captured and sequestered  
15       from the facility; and

16                       (f) does not exceed seven hundred net  
17       megawatts nameplate capacity; and

18                       (4) "sequester" means to store, or chemically  
19       convert, carbon dioxide in a manner that prevents its release  
20       into the atmosphere and may include the use of geologic  
21       formations and enhanced oil or natural gas recovery techniques.

22                       C. Subject to the limit imposed in Subsection H of  
23       this section, the advanced energy tax credit shall equal no  
24       more than six percent of the eligible generation plant costs of  
25       a qualified generating facility.

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1           D. A taxpayer may apply for the advanced energy tax  
2 credit by submitting to the taxation and revenue department a  
3 certificate issued by the department of environment pursuant to  
4 Subsection I of this section, documentation showing the  
5 taxpayer's interest in the qualified generating facility  
6 identified in the certificate and other information the  
7 taxation and revenue department requests to determine the  
8 amount of tax credit due to the taxpayer.

9           E. A taxpayer having applied for and been granted  
10 approval for a credit by the department pursuant to this  
11 section may claim an amount of available credit against the  
12 taxpayer's gross receipts tax, compensating tax or withholding  
13 tax due to the state.

14           F. A taxpayer that is liable for the payment of  
15 gross receipts or compensating tax with respect to the  
16 ownership, development, construction, maintenance or operation  
17 of a coal-based electric generating facility that does not meet  
18 the criteria for a qualified generating facility after advanced  
19 energy tax credits become available shall not claim an advanced  
20 energy tax credit pursuant to this section or a gross receipts  
21 tax credit, a compensating tax credit or a withholding tax  
22 credit pursuant to any other state law.

23           G. If the amount of the tax credit claimed exceeds  
24 the taxpayer's liability, the excess may be carried forward for  
25 up to five years.

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1           H. The aggregate amount of tax credit that may be  
2 claimed with respect to each qualified generating facility  
3 shall not exceed sixty million dollars (\$60,000,000).

4           I. An entity that holds title to a qualified  
5 generating facility may request a certificate of eligibility  
6 from the department of environment to enable the requester to  
7 apply for the advanced energy tax credit. The department of  
8 environment:

9                   (1) shall determine if the facility is a  
10 qualified generating facility;

11                   (2) shall require that the requester provide  
12 the department of environment with the information necessary to  
13 assess whether the requester's facility meets the criteria to  
14 be a qualified generating facility;

15                   (3) shall issue a certificate to the  
16 requester stating that the facility is or is not a qualified  
17 generating facility within one hundred eighty days after  
18 receiving all information necessary to make a determination;  
19 and

20                   (4) shall issue rules governing the procedure  
21 for administering the provisions of this subsection and  
22 Subsection J of this section, including a schedule of fees in  
23 which no fee exceeds one hundred fifty thousand dollars  
24 (\$150,000).

25           J. If the department of environment issues a

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1 certificate of eligibility to a taxpayer stating that the  
2 taxpayer is a qualified generating facility and the taxpayer  
3 does not sequester or control carbon dioxide emissions to the  
4 extent required by this section by the later of January 1, 2017  
5 or eighteen months after the commercial operation date of the  
6 qualified generating facility, the taxpayer's certification as  
7 a qualified generating facility shall be revoked by the  
8 department of environment and the taxpayer shall refund to the  
9 state tax credits granted pursuant to this section; provided  
10 that if the taxpayer demonstrates to the department of  
11 environment that the taxpayer made every effort to sequester or  
12 control carbon dioxide emissions to the extent feasible and the  
13 facility's inability to meet the sequestration requirements of  
14 a qualified generating facility was beyond the facility's  
15 control, in which case the department of environment shall  
16 determine, after a public hearing, the amount of the tax credit  
17 that should be refunded. The department of environment, in its  
18 determination, shall consider the environmental performance of  
19 the facility and the extent to which the inability to meet the  
20 sequestration requirements of a qualified generating facility  
21 was in the control of the taxpayer. The refund as determined  
22 by the department of environment shall be paid within one  
23 hundred eighty days following a final order by the department  
24 of environment.

25 K. Expenditures for which a taxpayer claims a

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1 credit pursuant to this section are ineligible for credits  
2 pursuant to the provisions of the Investment Credit Act or any  
3 other credit against compensating tax, gross receipts tax or  
4 withholding tax.

5 L. A taxpayer shall apply for approval for a credit  
6 within one year following the end of the calendar year in which  
7 the eligible generation plant costs are incurred.

8 Section 2. Section 62-16-1 NMSA 1978 (being Laws 2004,  
9 Chapter 65, Section 1) is amended to read:

10 "62-16-1. SHORT TITLE.--~~[This act]~~ Chapter 62, Article  
11 16 NMSA 1978 may be cited as the "Renewable Energy Act"."

12 Section 3. A new section of the Renewable Energy Act is  
13 enacted to read:

14 "[NEW MATERIAL] CLEAN ENERGY INVESTMENTS--DEPARTMENT OF  
15 ENVIRONMENT CERTIFICATION.--

16 A. The commission shall adopt rules to allow public  
17 utilities an opportunity to recover commission-approved costs  
18 made by a public utility for the development and ongoing  
19 construction of a clean energy project. Such costs must not  
20 exceed the level authorized by the commission in a proceeding  
21 to establish a reasonable level of expenditure that the public  
22 utility may undertake to develop and construct a clean energy  
23 project. The public utility shall recover approved costs  
24 incurred as of the time it files a general rate case whether or  
25 not the project goes forward.

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1           B. A public utility that incurs costs to reduce  
2 harmful air emissions at new or existing power plants may seek  
3 recovery of those costs in a general rate case, regardless of  
4 whether the technology or method used qualifies as a clean  
5 energy project or advanced coal technology. If a public  
6 utility seeks cost recovery for expenditures to reduce harmful  
7 air emissions beyond levels required by law or rule, the  
8 commission may find that such expenditures are reasonable.

9           C. The commission, upon petition or its own motion,  
10 shall open a docket to consider appropriate performance-based  
11 financial or other incentives to encourage public utilities to  
12 develop and construct clean energy projects.

13           D. As used in this section:

14                   (1) "advanced coal technology" means new  
15 coal-based generation, coal gasification or other technology  
16 using coal as a fuel source that is certified by the department  
17 of environment to meet the following specifications:

18                           (a) emits the lesser of: 1) what is  
19 achievable with the best available control technology; or 2)  
20 thirty-five thousandths pound per million British thermal units  
21 of sulfur dioxide, twenty-five thousandths pound per million  
22 British thermal units of oxides of nitrogen and one hundredth  
23 pound per million British thermal units of total particulates  
24 in the flue gas;

25                           (b) removes the greater of: 1) what is

1 achievable with the best available control technology; or 2)  
2 ninety percent or more of the mercury emitted from the input  
3 fuel;

4 (c) captures and sequesters or controls  
5 carbon dioxide emissions such that by the later of January 1,  
6 2017, or eighteen months after the commercial operation date,  
7 no more than one thousand one hundred pounds per megawatt-hour  
8 of carbon dioxide is emitted into the atmosphere;

9 (d) all infrastructure required for  
10 sequestration is in place by the later of January 1, 2017, or  
11 eighteen months after the commercial operation date of the  
12 qualified generating facility;

13 (e) includes methods and procedures to  
14 monitor the fate of the carbon dioxide captured and sequestered  
15 from the facility; and

16 (f) does not exceed seven hundred net  
17 megawatts nameplate capacity;

18 (2) "clean energy project" means the  
19 construction or modification of a new or existing electric  
20 generation facility in a manner that employs a technology that  
21 has additional financial risk because it is not commercially  
22 established or because it employs an established technology  
23 that is not commercially proven under the altitude, geographic  
24 or resource availability conditions under which it is proposed  
25 to operate and may include advanced coal technology, recycled

1 energy or other technology as determined by the commission; a  
2 "clean energy project" shall achieve emission levels no greater  
3 than those specified for advanced coal technology and shall not  
4 include nuclear power;

5 (3) "development" means the study, plan,  
6 design, site, permit, engineering, assessment and determination  
7 of the economic and operational feasibility at one or more  
8 locations and may include small-scale demonstration projects,  
9 if approved by the commission, as a reasonable expenditure;

10 4) "recycled energy" means energy produced by  
11 a generation unit with a name-plate capacity of not more than  
12 fifteen megawatts that converts the otherwise lost energy from  
13 exhaust stacks or pipes to electricity and does not combust  
14 additional fossil fuel; and

15 (5) "sequester" means to store, or chemically  
16 convert, carbon dioxide in a manner that prevents its release  
17 into the atmosphere and may include the use of geologic  
18 formations and enhanced oil or natural gas recovery techniques.

19 E. The department of environment may issue rules  
20 governing the procedure for administering the certification  
21 provisions of this section."

22 Section 4. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2007.

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